IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 25TH OCTOBER 2007 / 3RD KARTHIKA 1929

Bail Appl..No. 6451 of 2007()

CRIME NO. 105/05 OF EXCISE RANGE, CHERTHALA
CP.27/2007 of J.M.F.C.-I, CHERTHALA

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PETITIONER/ACCUSED

SIVANANDAN, AGED 46 YEARS,
S/O MADHAVAN, THEKKEVELIYIL HOUSE,
WARD NO.XII, CHERTHALA SOUTH PANCHAYATH,
CHERTHALA, ALAPPUZHA DISTRICT.

BY ADV. SRI.K.RAMANATHAN

RESPONDENTS:
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1. THE STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,ERNAKULAM.

2. THE EXCISE INSPECTOR,
CHERTHALA RANGE, ALAPPUZHA DISTRICT.

BY PUBLIC PROSECUTOR SRI. JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 25/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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B.A.No. 6451 of 2007

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Dated this the 25th day of October, 2007

O R D E R

Application for anticipatory bail. The petitioner is the first accused. Altogether there are three accused persons. The Excise party had intercepted the first accused. He was allegedly having in his possession 1.3 litres of arrack and 6 litres of spirit. Those contraband articles were seized. The case of the prosecution is that the third accused supplies the contraband article to the first accused and the second accused, i.e. the petitioner herein, who is the brother of the third accused, manages the business of the third accused on his behalf. He allegedly hands over the article to the first accused and collects money from the first accused.

2. It is the case of the Detecting Officials that the petitioner/A2 ran away from the scene of the crime on seeing the Excise party. That fact is narrated in the seizure mahazar and the occurrence report. Investigation is complete. Final report has already been filed. Cognizance has been taken by the learned Magistrate. Committal proceedings has been registered. The petitioner has not

entered appearance before the Excise officials or before the learned Magistrate so far. Steps have been taken by the learned Magistrate. The petitioner apprehends imminent arrest.

3. The learned counsel for the petitioner submits that the petitioner is absolutely innocent. He has nothing to do with the transaction of the first accused or the third accused. No person has actually seen him running away from the scene. In these circumstances the petitioner may be granted anticipatory bail, submits the learned counsel.

4. The learned Prosecutor opposes the application. He submits that the Detecting officials had allegedly seen the petitioner running away from the scene of the crime. The name of the petitioner was ascertained from the first accused, who was apprehended. His name finds a place in the contemporaneous seizure mahazar and occurrence report. In these circumstances the petitioner may not be granted anticipatory bail. He may be directed to resort to the ordinary and normal procedure of appearing before the Investigating Officer or the learned Magistrate having jurisdiction and then seek regular bail.

5. I have considered all the relevant inputs. The relevant portion of the case diary has been read over to me. Independent evidence about the

alleged running away of the petitioner has not been shown to me. The Detecting officials have allegedly seen the petitioner running away. The name of the petitioner has been ascertained from the 1st accused, who was apprehended.

6. At this early stage, I shall carefully avoid any detailed discussion on merits about the acceptability of the allegation raised or the credibility of the data collected. Suffice it to say that, on an anxious evaluation of all the relevant inputs, I am unable to find any features in this case, which would justify the invocation of the extra ordinary equitable discretion under section 438 Cr.P.C. in favour of the petitioner. This I am satisfied is a fit case where the petitioner must resort to the ordinary and normal procedure of appearing before the Investigator or the learned Magistrate having jurisdiction and then seek regular bail in the ordinary course. The mere fact that the offence is triable exclusively by a Court of sessions shall not persuade the learned Magistrate to abdicate his jurisdiction.

5. This application is accordingly dismissed. I may however hasten to observe that if the petitioner appears before the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to

pass orders on merits, in accordance with law and expeditiously - on the date of surrender itself.

(R. BASANT)
Judge

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